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Sheila M. Gowan

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
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DREIER LLP,	:
	:
	:
Debtor.	:
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Chapter 11
Case No. 08-15051 (SMB)
(Jointly Administered)

**CHAPTER 11 TRUSTEE'S APPLICATION PURSUANT TO
SECTIONS 327, 328 and 330 OF THE BANKRUPTCY CODE
FOR AUTHORIZATION TO RETAIN DIAMOND McCARTHY LLP
AS COUNSEL, NUNC PRO TUNC TO DECEMBER 30, 2008**

TO: THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Sheila M. Gowan, chapter 11 trustee for the estate of Dreier LLP (the "Trustee"), as and for her Application Pursuant to Sections 327, 328 and 330 of the Bankruptcy Code for Authorization to Retain Diamond McCarthy LLP as Attorneys for the Trustee, *Nunc Pro Tunc*, to December 30, 2008 (the "Application"), respectfully represents as follows:

BACKGROUND

1. On December 4, 2008, in *United States of America v. Marc Dreier*, the United States Attorney for the Southern District of New York filed a criminal complaint alleging that Marc Dreier ("Dreier") committed securities and wire fraud. Federal authorities arrested Dreier on December 7, 2008, and he is currently in federal custody pending trial.

2. On December 8, 2008, in *SEC v. Dreier*, Case No. 08-civ-10617 (MGC), Mark F. Pomerantz (the “Receiver”) was appointed Receiver of Dreier’s assets, including Dreier’s interests in Dreier LLP (the “Debtor”) and certain of the Debtors’ affiliated entities.

3. On December 16, 2008, (the “Commencement Date”) the Receiver, on behalf of Dreier LLP, commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Following Dreier’s arrest and incarceration, the Receiver has operated the Debtor’s business and managed the Debtor’s assets pending appointment of a chapter 11 Trustee.

4. On December 30, 2008, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the Trustee as the chapter 11 trustee for the estate of Dreier LLP, which appointment was approved by an order of this Court dated January 9, 2009 (the “Trustee Appointment Date”) [Docket No. 39]. The Trustee has obtained a bond in the amount of \$2,000,0000 satisfactory to the U.S. Trustee. Accordingly, the Trustee has qualified in accordance with § 322 of the Bankruptcy Code and is now serving as chapter 11 Trustee for the Debtor’s chapter 11 estate pursuant to § 1104 of the Bankruptcy Code.

5. On January 8, 2009, the U.S. Trustee appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”) [Docket No. 38].

JURISDICTION

6. This Court has subject matter jurisdiction to consider and determine this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

7. The Trustee seeks authority pursuant to sections 327, 328, and 330 of the Bankruptcy Code to employ and retain Diamond McCarthy LLP (“Diamond McCarthy”), *nunc pro tunc*, to the Trustee Appointment Date, under a general retainer to perform the legal services that are, or will be necessary, to compensate Diamond McCarthy in accordance with its usual hourly rates in effect when services are performed, and to reimburse Diamond McCarthy for its out of pocket expenses consistent with its usual practices.

8. To carry out her duties, the Trustee must employ legal counsel to represent her in these proceedings and to render various services including, but not limited to, the following:

- a. To represent and advise the Trustee with respect to her powers and duties as chapter 11 Trustee and actions to be taken in connection therewith;
- b. To assist the Trustee with any necessary applications, orders, reports, or other legal papers, including any papers or pleadings that the Trustee may file in this or any other related proceedings and to appear on behalf of the Trustee in proceedings or legal actions instituted by or against the Trustee or the Debtor’s estate;
- c. To assist and advise the Trustee in connection with a plan or plans of reorganization and related disclosure statement(s) and all related documents, and such further actions as may be required in connection with the administration by the Trustee;
- d. To advise and assist the Trustee in connection with any matters affecting property of the Debtor’s estate, including, but not limited to, the operation and/or sale or other proposed disposition of property of the Debtor’s estate, the prosecution of actions on the Trustee’s behalf to preserve or recovery estate property, the defense of any actions commenced against the Trustee, the negotiation of disputes in which the Trustee is involved, and the preparation of objections to claims filed against the Debtor’s estate; and

- d. To advise and assist the Trustee in connection with the investigation of the acts, conduct, assets, liabilities and financial condition of the Debtor, and any other matters affecting the Debtor, its estate, or the Trustee's rights and duties as chapter 11 Trustee.

Diamond McCarthy is Qualified to Represent the Trustee

9. The Trustee is a member of Diamond McCarthy. The Trustee has been advised that Richard I. Janvey, Howard D. Ressler, Stephen T. Loden, and Joan M. Secofsky of Diamond McCarthy, as well as other members, counsel, and associates of Diamond McCarthy will be employed and are members in good standing of the Bar of the State of New York and the United States District Court for the Southern District of New York.

10. The Trustee has selected Diamond McCarthy as her attorneys because of the firm's experience, knowledge, and expertise in the field of debtors' protections and creditors' rights and business reorganization under chapter 11 of the Bankruptcy Code and other insolvency laws. Diamond McCarthy has established a record of obtaining recoveries for national trustees, international liquidators, financial institutions, and others in complex insolvency litigation matters, nationwide and globally, arising out of financially distressed public and private companies. Diamond McCarthy represents or has represented, among others, the following parties in chapter 11 and chapter 7 cases:

- a. Special counsel to the post-confirmation liquidating trustee in the USA Capital chapter 11 cases in Nevada bankruptcy court involving the investigation, analysis, and pursuit of affirmative claims on behalf of the estate arising from a \$960 million Ponzi scheme related to the management of a sub-prime mortgage servicing company;
- b. Counsel to the Joint Official Liquidators in the Parmalat chapter 11 cases currently pending in the Southern District of New York in pursuit of claims exceeding \$1 billion resulting from an alleged global Ponzi scheme conducted through the structured finance markets;

- c. Counsel to the LJM2 Creditors Liquidation Trust in pursuit of malpractice claims against a national law firm and big-4 auditor in connection with the Enron chapter 11 proceedings pending in the Southern Districts of New York and Texas; and
- d. Counsel to the statutory Creditors Committee of Livent, Inc. in the Southern District of New York, including bringing securities fraud class actions on behalf of individual and institutional holders of notes issued by Livent and pursuit of parallel equitable subordination litigation against Livent's lead lender in litigation both in the United States and Canada.

In addition to these representations, Diamond McCarthy has also successfully represented Trustees and Creditors Committees in numerous other bankruptcy cases, including: (i) Precept Business Services, Inc.; (ii) AgriBioTech, Inc.; (iii) Jewel Recovery, L.P.; (iv) Zale Jewelers; (v) Southeast Banking Corporation; (vi) Inverworld; and (vii) Friede Goldman Halter. The Trustee believes that Diamond McCarthy's demonstrated achievements in complex insolvency proceedings arising from allegedly fraudulent business practices makes the Firm well-qualified to represent the Trustee in an efficient, timely and effective manner.

Diamond McCarthy Is Disinterested

11. To the best of the Trustee's knowledge, the members of, counsel to, and associates of Diamond McCarthy do not have any connection with or any interest adverse to the Debtor, its creditors, or any other party in interest, or their respective attorneys and accountants, except as may be set forth in the attached affidavit and disclosure statement of Richard I. Janvey, Esq. (the "Janvey Affidavit"). As set forth in the Janvey Affidavit, Diamond McCarthy is disinterested as that term is defined in the Bankruptcy Code.

12. The Trustee, subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York and further orders of

13. The Trustee understands that Diamond McCarthy hereafter intends to apply for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York, the guidelines established by the U.S. Trustee, and further orders of this Court for all services performed and expenses incurred after the Commencement Date.

NOTICE

14. The Trustee has served notice of this Application on (i) the U.S. Trustee; (ii) the Receiver; (iii) attorneys for the Creditors' Committee; (iv) the attorneys for the Debtor's known pre-petition lenders; (v) the Securities and Exchange Commission; (vi) the Internal Revenue

15. No previous request for the relief sought herein has been made by the Trustee to this or any other court.

WHEREFORE the Trustee respectfully request that the Court grant the relief requested herein and such other and further relief as is just.

Dated: January 19, 2009
New York, New York

/s/Sheila M. Gowan
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Chapter 11 Trustee